

UNITED STATES DISTRICT COURT  
for the  
DISTRICT OF MASSACHUSETTS

Civil Action No. 04-12011-MLW

CARLOS A. AGUIAR, )  
Plaintiff )  
 )  
v. )  
 )  
LIMA & CURA FISHING )  
CORPORATION, )  
Defendant )

**DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT**

**FIRST DEFENSE**

By way of affirmative defense the defendant states that the plaintiff's Complaint fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

The defendant responds to the allegations contained in the plaintiff's Complaint paragraph by paragraph as follows.

**General Factual Allegations**

1. The defendant lacks personal knowledge to either admit or deny the allegations contained in paragraph 1 of the plaintiff's Complaint.
2. The defendant admits the allegations contained in paragraph 2 of the plaintiff's Complaint.
3. The defendant admits the allegations contained in paragraph 3 of the plaintiff's Complaint.
4. The defendant admits the allegations contained in paragraph 4 of the plaintiff's Complaint.
5. The defendant admits the allegations contained in paragraph 5 of the plaintiff's Complaint.
6. The defendant admits the allegations contained in paragraph 6 of the plaintiff's Complaint.
7. The defendant denies the allegations contained in paragraph 7 of the plaintiff's Complaint.

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8. The defendant admits the allegations contained in paragraph 8 of the plaintiff's Complaint.
9. Defendant neither admits nor denies the allegations contained in paragraph 9 of the plaintiff's Complaint because it calls for a conclusion of law to which no response is required.
10. The defendant admits the allegations contained in paragraph 10 of the plaintiff's Complaint.
11. The defendant denies the allegations contained in paragraph 11 of the plaintiff's Complaint.
12. The defendant denies the allegations contained in paragraph 12 of the plaintiff's Complaint.

Jurisdiction

13. Defendant neither admits nor denies the allegations contained in paragraph 13 of the plaintiff's Complaint because it calls for a conclusion of law to which no response is required.
14. Defendant neither admits nor denies the allegations contained in paragraph 14 of the plaintiff's Complaint because it calls for a conclusion of law to which no response is required.

COUNT I

CARLOS A. AGUIAR v. LIMA & CURA FISHING CORPORATION

(JONES ACT NEGLIGENCE)

15. The defendant repeats and realleges its answers to paragraphs 1 through 14 of the plaintiff's Complaint and incorporates them herein by reference.
16. The defendant denies the allegations contained in paragraph 16 of the plaintiff's Complaint.
17. The defendant denies the allegations contained in paragraph 17 of the plaintiff's Complaint.
18. Defendant neither admits nor denies the allegations contained in paragraph 18 of the

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plaintiff's Complaint because it states a conclusion of law to which no response is required.

WHEREFORE, the Defendant denies that the Plaintiff is entitled to recover, in any amount or fashion, from the Defendant.

COUNT II

CARLOS A. AGUIAR v. LIMA & CURA FISHING CORPORATION

(GENERAL MARITIME LAW - UNSEAWORTHINESS)

19. The defendant repeats and realleges its answers to paragraphs 1 through 14 of the plaintiff's Complaint and incorporates them herein by reference.
20. The defendant denies the allegations contained in paragraph 20 of the plaintiff's Complaint.
21. The defendant denies the allegations contained in paragraph 21 of the plaintiff's Complaint.
22. Defendant neither admits nor denies the allegations contained in paragraph 22 of the plaintiff's Complaint because it states a conclusion of law to which no response is required.

WHEREFORE, the Defendant denies that the Plaintiff is entitled to recover, in any amount or fashion, from the Defendant.

COUNT III

CARLOS A. AGUIAR v. LIMA & CURA FISHING CORPORATION

(GENERAL MARITIME LAW - MAINTENANCE and CURE)

23. The defendant repeats and realleges its answers to paragraphs 1 through 14 of the plaintiff's Complaint and incorporates them herein by reference.
24. The defendant denies the allegations contained in paragraph 24 of the plaintiff's Complaint.

WHEREFORE, the Defendant denies that the Plaintiff is entitled to recover, in any amount or fashion, from the Defendant.

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COUNT IV

CARLOS A. AGUIAR v. LIMA & CURA FISHING CORPORATION

(GENERAL MARITIME LAW/JONES ACT - INTENTIONAL NEGLIGENT  
FAILURE TO PROVIDENCE MAINTENANCE and CURE)

25. The defendant repeats and realleges its answers to paragraphs 1 through 14 of the plaintiff's Complaint and incorporates them herein by reference.
26. The defendant denies the allegations contained in paragraph 26 of the plaintiff's Complaint.
27. The defendant denies the allegations contained in paragraph 27 of the plaintiff's Complaint.
28. The defendant denies the allegations contained in paragraph 28 of the plaintiff's Complaint.
29. The defendant denies the allegations contained in paragraph 29 of the plaintiff's Complaint.

WHEREFORE, the Defendant denies that the Plaintiff is entitled to recover, in any amount or fashion, from the Defendant.

**THIRD DEFENSE**

By way of affirmative defense, the defendant says that if the plaintiff suffered injuries or damage, as alleged, such injuries or damage were caused by someone for whose conduct the defendant was not and is not legally responsible.

**FOURTH DEFENSE**

By way of affirmative defense, the defendant says that if the plaintiff was injured as alleged, which the defendant denies, those injuries were the result of an act of God for which the defendant is not legally responsible.

**FIFTH DEFENSE**

By way of affirmative defense, the defendant says that if the defendant was negligent or

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its vessel unseaworthy, which it denies, then the plaintiff's injuries, if any, were contributed to by the plaintiff's own negligence to such a degree that any recovery must be reduced pro rata.

**SIXTH DEFENSE**

By way of affirmative defense, the defendant says that if it was negligent or its vessel unseaworthy, which it denies, then the plaintiff's injuries, if any, were the result of the plaintiff's failure to act upon the last clear chance to avoid injury.

**EIGHTH DEFENSE**

By way of affirmative defense, the defendant says that if it is found liable to the plaintiff for any of its alleged damages, the amount of such liability is limited pursuant to the provisions of the Limitation of Liability Act, 46 U.S.C.A. §§181, et seq.

**THE DEFENDANT DEMANDS A TRIAL BY JURY.**

For the Defendant,  
Lima & Cura Fishing Corporation,  
By its attorneys,

**REGAN & KIELY LLP**

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I hereby certify that this document has  
been served upon all counsel of record  
in compliance with the FRCP  
Joseph A. Regan/cb  
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